

STANDARD CRIMINAL 5a

PRESUMPTION OF INNOCENCE

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. You must start with the presumption that the defendant is innocent.

SOURCE: The instruction is based on language from the 1989 and 1996 versions of the Revised Arizona Jury Instructions.

USE NOTE: The Committee strongly recommends the court use this instruction in every case along with the required reasonable doubt instruction.

COMMENT: In *Taylor v. Kentucky*, 436 U.S. 478, the United States Supreme Court held that, under facts of that case, the failure of the trial court to give defendant's requested instruction on presumption of innocence violated defendant's due process rights to a fair trial. In *Kentucky v. Whorton*, 441 U.S. 786, 789, the United States Supreme Court held that the failure to give a requested instruction on the presumption of innocence in and of itself does not violate the Constitution, and noted that the error it found in *Taylor* was based on the facts of that case. *Accord, State v. White*, 160 Ariz. 24, 31, 770 P.2d 328, 335 (1989). Because any error in the failure to give a presumption of innocence instruction will depend on the facts of the case, the Committee is of the opinion that the better practice is to give this instruction in every case.